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Guide to the

**Conflict of Interest Law**

for State Employees



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## **The Massachusetts Conflict of Interest Law**

The conflict of interest law (Chapter 268A of the General Laws) sets a minimum standard of ethical conduct for all state employees and officials. Enacted in 1962, the conflict law's goal is to promote confidence in our government and in the integrity of its officials.

## **The Massachusetts Financial Disclosure Law**

The financial disclosure law (Chapter 268B of the General Laws) was enacted in 1978 to provide for full public financial disclosure by elected and major policy-making appointed state and county officials.

## **The Massachusetts State Ethics Commission**

The State Ethics Commission was established in 1978 by the Legislature as an independent civil enforcement agency to enforce the conflict of interest and financial disclosure laws.

The Commission is a bipartisan, five-member board appointed by the Governor, the Secretary of State and the Attorney General. The members serve part-time for staggered five year terms. The Commissioners appoint an Executive Director who heads a full-time staff in four divisions: Enforcement, Legal, Public Education and Financial Disclosure.



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## **Purpose of the Law**

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The purpose of the conflict law is to ensure that public employees' private financial interests and relationships do not conflict with their public obligation to act objectively and with integrity. The law is broadly written to prevent a public employee from becoming involved in a situation which could result in a conflict or give the appearance of a conflict.

The law covers what you may do on the job, after hours (in your private capacity) and even after you leave public service.

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## **Who the Law Governs**

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### **State Employees**

The conflict of interest law regulates the official activity of all state employees. You are considered a state employee if you hold any office, position, employment or membership in any state agency or board. It does not matter whether you are elected or appointed, full or part-time, paid or unpaid. People who work as consultants for a state agency are generally covered by the conflict law, as well.

The conflict law also regulates the activities of former employees and business partners of current and former employees. Private parties are subject to the bribery and gift restrictions under the conflict law.

### **Special State Employees**

If you hold a "special state employee" position, two parts of the law - Sections 4 and 7 - will apply less restrictively to you.

You are automatically a “special state employee” if:

1. you are an unpaid elected or appointed official; or
2. you hold a part-time appointed position which allows you to work another job during normal working hours and before you begin any private employment you notify the Ethics Commission (Disclosure forms are available in the Commission’s office).

In addition, you may be expressly classified as a special state employee by your appointing official if you were not paid for an appointed position for more than 800 working hours (approximately 20 weeks full-time) during the preceding 365 days. If you are not paid by the hour, calculate seven hours for every or part of a day worked.

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## **What the Law Prohibits**

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### **Bribes (Section 2)**

The conflict law prohibits the most obvious kinds of corruption: bribes. The law imposes criminal penalties, not only on state employees who seek or receive payoffs or kickbacks, but also on anyone who bribes or attempts to bribe a public official.

### **Accepting Gifts (Section 3)**

It is illegal to accept anything of “substantial value” from anyone with whom you have had or are likely to have official dealings even if the motivation for the gift is to express gratitude for a job well done or to foster goodwill.

The courts and the Commission have deemed “substantial value” to be



\$50 or more. Additional compensation, waived fees, discounts, gift certificates and entertainment are considered gifts. In addition, free or discounted services such as construction or accounting work are considered gifts.

Private parties who offer such inducements or rewards are also subject to penalties under the conflict law.

### **Acting on Own/Family's/Business' Financial Interests (Section 6)**

The law recognizes that your objectivity and integrity can be compromised when you act on matters in which you, your family or your business has a financial stake. The law, therefore, prohibits you from taking action on any "particular matter" which would affect your own financial interest or the financial interest of:

1. your immediate family (your spouse and both of your children, parents, brothers and sisters);
2. your partner(s);
3. a business organization in which you serve as an officer, director, trustee, partner or employee (including a non-profit organization); and
4. any person or organization with whom you are negotiating or have any arrangement concerning future employment.

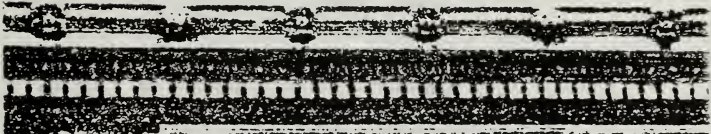
A "particular matter" is defined by law to include almost any application, contract, finding, decision or controversy which might come before you. The definition refers to specific matters and proceedings rather than general issues. The enactment of general legislation is excluded from the definition of "particular matter" under the conflict law. This means that Legislators and other state officials may participate in drafting, sponsoring, deliberating and voting on general legislation even if the

legislation would affect their financial interest or the financial interest of an immediate family member or their business.

The law forbids nepotism. Nepotism is commonly understood to include favoritism of any sort afforded a relative. Section 6 prohibits a state employee or official from participating in any way in the hiring, promotion, performance review or salary recommendation of an immediate family member.

*Appointed* state employees may participate in a matter which affects their own, their immediate family's or their business' financial interest only if they receive permission from the public official who appointed them to their job. To receive the exemption, the employees must first advise their appointing official of the particular matter in which they normally would participate as part of their job and make full disclosure of the financial interest involved. A copy of this statement must be sent to the Ethics Commission. The appointing official may then decide to assign the matter to another person or allow the employee to participate. A determination to allow the employee to participate must be in writing and filed with the Ethics Commission.

For example if you receive written permission from your appointing official, you may hire your sister despite the conflict. This exemption is not available to elected officials.



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## **Obtaining State Contracts and Multiple Jobs (Section 7)**

In general, state employees are prohibited from having a direct or indirect financial interest in a "contract" made by a state agency. Contracts include agreements to provide goods and services. Employment also constitutes a contract with the state. Therefore, generally, state employees are prohibited from holding more than one paid position or contracting with a state agency. These restrictions will avoid any public perception that state employees have an "inside track" on getting state contracts and jobs.

For example, if you work full-time nights for the MBTA, you would be prohibited from taking another paid full-time state job during the day. If you owned a company which provided cleaning services, your company could not contract with the MBTA .

There are a number of exemptions to this general rule including exceptions for special state employees and Legislators. These exemptions cannot be treated comprehensively in this pamphlet; call the Commission for specific advice on Section 7.

## **Misusing Your Official Position (Section 23)**

Section 23 provides a general code of ethics for all public employees. Section 23 applies when there is an overlap or a direct connection between a public employees' official responsibilities and his or her private interests or relationships. The overlap can, at a minimum, create the appearance of a conflict.

The conflict law prohibits you from using or attempting to use your state position to obtain unwarranted privileges for yourself or



anyone else. You also may not, through your actions, give the reasonable impression that you can be improperly influenced or that you will act with bias. The law prohibits you from misusing confidential information obtained on the job and from accepting outside employment which is inherently incompatible with your public position.

Examples of violations of Section 23 include running a private business out of your public office, using state resources such as stationery, phones and copiers for political campaigns and putting friends on the payroll who are unqualified.

### **Representing Private Parties in State Matters (Section 4)**

The law limits what state employees may do "on the side" for a private party. This section is designed to protect the state employee and the commonwealth from the problems resulting when people "serve two masters."

When you are a state employee, you may not represent a private party before any state agency, even if you are not paid. In addition, you may not be paid by a private party in relation to a "particular matter" if any state agency is a party to that matter or has a direct and substantial interest in it.

For example, if you are a lawyer or engineer, being a state employee would preclude you from representing your clients before any state agency. In addition, you are prohibited from representing your own company or your employer before state agencies.

*Note:* This section of the law applies less restrictively to special state employees and Legislators.

## Misusing Government Connections (Section 5)

The conflict law prohibits former employees from deriving unfair advantages by misusing friendships formed or confidential information obtained while serving the government.

1. If you participated in a particular matter as a state employee you may *never* work on the same matter for a private party after you leave state government. 2. If a matter was under your official responsibility, you are subject to a one year "appearance" restriction. You may not represent a private party before any state agency in connection with that matter for one year after leaving the government. 3. There are no restrictions concerning a matter you never dealt with or which was not before your board or agency while you were a state employee.

For example, if you negotiated a contract with a computer company to provide computer services for your agency, you may not leave the commonwealth and work for the company on the same contract. You may, however, work for that company on other projects. You could also work for the computer company on contracts proposed and awarded *after* you left your position.



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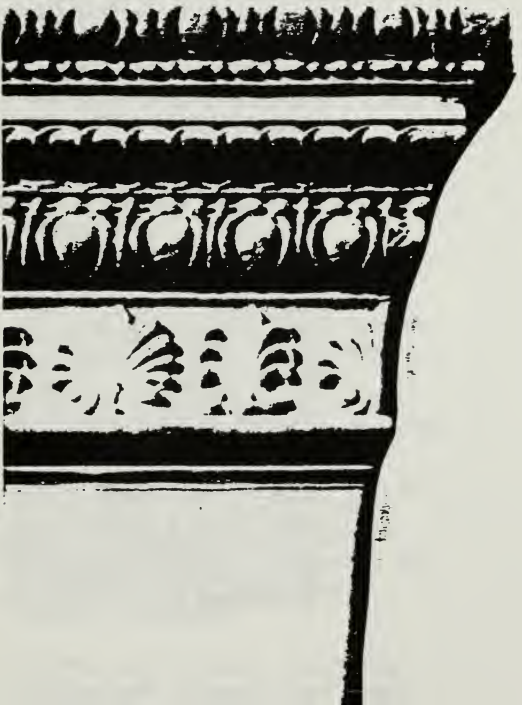
## How to Obtain Legal Advice

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This pamphlet presents a brief overview of the conflict law and suggests activities which you, as a state employee, must avoid. It is not a comprehensive review.

If you have a question about your own activities, we urge you to request an opinion from the Ethics Commission *prior* to engaging in the activity in question. Requests to the Commission for an advisory opinion must be in writing and must be about a real, not hypothetical situation which presents a problem under the conflict of interest law. You may also call the Commission's Legal Division at (617) 727-0060 for informal confidential advice on the conflict law.

If you have questions about others' activities, urge them to use the opinion process.



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## **Investigations**

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### **How to File a Complaint**

Anyone can file a complaint concerning a conflict of interest - in person, over the phone or by letter. The Commission keeps the identity of all complainants confidential.

The Commission can initiate investigations based on these complaints, on referrals from other civil and criminal enforcement agencies or on its own based on information obtained through other sources, such as news reports.

If you believe that a violation of the conflict of interest law has occurred or is occurring, you may call or visit the State Ethics Commission office at Room 619, One Ashburton Place, Boston, (617) 727-0060, and speak with a member of the Commission's enforcement staff.

### **Investigation Procedures**

The Enforcement Division reviews each complaint received. If the complaint falls within the Commission's jurisdiction, an initial "screening" is done to determine if the facts warrant a formal investigation. The screening is an informal fact gathering stage. Many enforcement cases end confidentially at the conclusion of the screening with a private educational letter. In these cases, no formal charge of a violation is brought and the matter remains confidential.

After the screening, if the staff determines a case should be formally investigated, authorization is sought from the appointed Commissioners to conduct such an in-

vestigation. During the formal inquiry the Commission staff has subpoena powers and may take testimony under oath.

After a formal inquiry is conducted the Commissioners vote on whether "reasonable cause" exists to believe that the law has been violated. If the Commissioners find "reasonable cause" the subject of the complaint is entitled to a public hearing before the Commission to hear the evidence against him or her and to present evidence and testimony on his or her own behalf. At the conclusion of a public hearing the Commissioners issue a Decision and Order stating whether there was a violation of the conflict law and what fine, if any, will be assessed. A person has the right to appeal the Commission's decision directly to Superior Court. In the alternative, the person may settle the case by admitting publicly that he or she violated the law and agreeing to pay a civil penalty for each violation.

If the Commission finds "no reasonable cause" to believe the law has been violated, the case is closed and records and proceedings of the investigation remain confidential.

## **Penalties**

The Commission is authorized to impose civil fines of up to \$2,000 per violation of the conflict law. In addition, the Commission may bring a civil action against individuals who have acted to their economic advantage in violation of the law, and may recover on behalf of the commonwealth or a municipality, damages in the amount of the economic advantage. In certain circumstances, the Commission may also recover multiple damages.

Further, any violation which has substantially influenced an action



taken by a state agency is grounds to rescind or cancel that action.

The law also carries criminal penalties including fines and terms of imprisonment. Criminal prosecutions under the law are the responsibility of the Attorney General and District Attorneys. The Ethics Commission has the authority to refer cases to or concurrently investigate cases with these other law enforcement agencies, but the Ethics Commission's jurisdiction is limited to civil enforcement of the law.

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## **Public Education**

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The Public Education Division conducts seminars for state employees and officials to help avoid potential conflicts which may arise between an employee's private interests and public position. The Commission staff will travel anywhere in the state to conduct a seminar tailored to any group of public employees or citizens. The goal of the presentation and question and answer period is to provide an understanding of the basic principles of the law and how to comply with it by discussing "real life" conflicts that arise on the job. Call the Commission to arrange for a seminar for your agency or board.

The Commission has available a comprehensive Practical Guide to the Conflict of Interest Law for State Employees, as well as advisories and fact sheets which provide guidance on various aspects of the conflict law. We will mail these publications to you upon request.

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## **The Financial Disclosure Law**

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### **Purpose of the Law**

The financial disclosure law requires annual public disclosure of financial interests and associations which might give rise to conflict or the appearance of conflict. Elected and certain appointed state and county officials must file Statements of Financial Interests (SFI) each spring covering their financial activities of the previous year.

### **Who Must Disclose**

You must file a financial disclosure form if you are:

1. An elected state official;
2. A "candidate" for state or county office; or
3. An appointed state official designated by your agency as holding a "major policy-making position." Check with your agency to see if you are on their designation list.

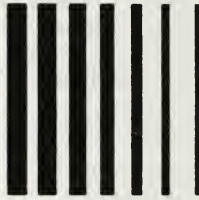
### **What Must Be Disclosed**

You must disclose financial information such as:

1. government and private employment;
2. business ownership and equity;
3. real property in Massachusetts, investment and rental properties, mortgage loan information;
4. securities and investments;
5. gifts and honoraria;
6. certain information about your spouse and dependent children residing in your household.

Filing a false statement or failure to file on time or to amend an incomplete SFI within 10 days of being notified by the Commission results in a penalty.

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